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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,739	12/05/2003	Eric G. Hull	427600700087	3999
7590 H. Duane Switzer Jones Day North Point 901 Lakeside Avenue Cleveland, OH 44114-1190			EXAMINER RODRIGUEZ, RUTH C	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 09/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/729,739	Applicant(s) HULL ET AL.	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7-9,11,12,17-19 and 23-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-29 is/are allowed.
- 6) ☒ Claim(s) 1,7,9,11,12,17-19, 23-25, 30 and 32-39 is/are rejected.
- 7) ☐ Claim(s) 8 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 7-9, 11, 12, 17-19, 23-25 and 30-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 1, 12, 19 and 30 recite "for attaching an electrical nonmetallic tubing to a surface of a concrete form", "for receiving an end portion of an electrical nonmetallic tube", "configured to provide insertion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement with a support surface that covers said bottom opening when said plane outer surface of the attachment flange rests against the support surface" and "being configured to releasably hold an end portion of an electrical nonmetallic tube in said socket against unintentional

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displacement therefrom while permitting separation of the socket and the end portion of the electrical nonmetallic tube". These limitations render claims 1, 12, 19 and 30 as indefinite because it is unclear whether the claims are directed to a fitting by itself or to the combination of a fitting, an electrical nonmetallic tube and a support surface. The limitations directed to the combination of the fitting, electrical nonmetallic tube and the support surface are presented in an intended use manner. However, the Applicant bases his argument in the combination of these elements. For purpose of examination, the current claims directed to the sub-combination of the fitting will be examined and the intended use limitations will be treated as such until the claims are amended and the combination of the fitting, electrical nonmetallic tube and the support surface is positively claimed.

4. Claim 32 and 36-38 recite "said teeth being configured to provide movement of an end portion of an electrical nonmetallic tube both into and out of said socket while releasably holding the end portion of the electrical nonmetallic tube within the socket by reception of the teeth in an external circumferential groove in the end portion of the electrical nonmetallic tube". This limitation render claims 32 and 36-38 as indefinite because it is unclear whether the claims are directed to a fitting by itself or to the combination of a fitting and an electrical nonmetallic tube. This limitation is presented in an intended use manner. However, the Applicant bases his argument in the combination of these elements. For purpose of examination, the current claims directed to the sub-combination of the fitting will be examined and the intended use limitation will

be treated as such until the claims are amended and the combination of the fitting and the electrical nonmetallic tube.

5. Claim 39 is directed to “a one-piece fitting for attaching electrical nonmetallic tubing to a surface of a concrete form” and the claim also recites “for receiving an end portion of an electrical nonmetallic tube”, “configured to provide insertion of an end portion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement releasably holding the end portion of an electrical nonmetallic tube within said socket against unintentional displacement therefrom while permitting separation of the socket and the end portion of the electrical nonmetallic tube”. These limitations render claim 39 as indefinite because it is unclear whether the claims are directed to combination of a form and a fitting or to the combination of a form, fitting and an electrical nonmetallic tube. The limitations directed to the combination of the form, the fitting and the electrical nonmetallic tube are presented in an intended use manner. However, the Applicant bases his argument in the combination of these elements. For purpose of examination, the current claims directed to the combination of the form and the fitting will be examined and the intended use limitations will be treated as such until the claims are amended and the combination of the form, the fitting and the electrical nonmetallic tube is positively claimed.

6. Claims 7-11, 17, 18, 23-25, 31 and 33-35 have been rejected as being indefinite since the claims depend upon indefinite claims 1, 12, 19 and 30.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

States.

8. Claims 1, 7, 9, 11, 12, 17-19, 23-25, 30 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (US 6,988,747 B2) in view of Schamp (US 685,694).

Allen discloses a fitting (16,30) comprises a molded plastic body (30) having an inverted generally cup-like configuration (Figs. 1-10 and 13). The body has a peripheral wall (36) and an end wall (outer wall opposite to 16) forming an internal cavity having a bottom opening and a generally cylindrical socket (44). The socket extends through the endwall into the cavity (Figs. 1-10 and 13). The socket has a socket wall (between end wall and 44) that is surrounded by the cavity and with the peripheral wall in outwardly-spaced relationship to the socket wall (Figs. 1-10 and 13). The socket has a longitudinal socket axis intersecting the bottom opening (Figs. 1-10 and 13). The socket wall has a generally cylindrical entrance portion extending over a portion of the axial length of the socket (Figs. 1-10 and 13). The socket wall has a plurality of circumferentially-spaced resilient fingers (44) extending from the generally cylindrical entrance portion over the remaining length of the socket wall and being inclined

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inwardly toward the socket axis from the generally cylindrical entrance portion (Figs. 1-10 and 13). The fingers terminal ends are spaced from the bottom opening (Figs. 1-10 and 13). The cavity, the socket and the peripheral wall are configured to provide insertion of an electrical nonmetallic tube into and through the socket past the finger terminal ends into engagement with a support surface that covers the bottom opening when the plane outer surface of the attachment flange rests against the support surface (Figs. 1-10 and 13). The body peripheral wall and endwall are continuous and free of openings therethrough around the socket and capable of precluding entry of poured concrete into the socket and the cavity through the body peripheral wall and the endwall (Figs. 1-10 and 13). The fingers are configured to releasably hold an end portion of an electrical nonmetallic tube in the socket against unintentional displacement therefrom while permitting separation of the socket and the end portion of the electric nonmetallic tube (when a small enough tube is used or by forceful separation) Allen fails to disclose a flange extending outwardly from the peripheral wall around a bottom opening where the flange has a plane outer surface and having a plurality of fastener receiving holes therethrough spaced around the opening where the plane outer of the attachment flange being at one terminal end of the fitting and the end wall is at a generally opposite end of the fitting and the plane outer surface of the attachment flange is positionable against a plane support surface for attaching the fitting to the support surface with the bottom opening closed by the support surface. However, Schamp teaches a fitting (10,15). The fitting has a body (10,15) with a peripheral wall (10) and a flange (15) extending outwardly from the peripheral wall around a bottom opening (Figs. 1-3 and 5).

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The flange has a plane outer surface and having a plurality of fastener receiving holes (16) therethrough spaced around the opening (Figs. 1-3 and 5). The plane outer of the attachment flange is at one terminal end of the fitting and the end wall is at a generally opposite end of the fitting (Figs. 1-3 and 5). The plane outer surface of the attachment flange is positionable against a plane support surface (Figs. 1-3 and 5). The plate allows securing the body to a wall (Page 1 , Lines 39-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an attachment flange having a plurality of fastener receiving holes that extends outwardly from the body wall around the bottom opening with a plane outer surface that is at one terminal end of the fitting and the end wall is at generally opposite terminal end of the fitting so that the plane outer surface of the attachment flange is positioned against a plane support surface as taught by Schamp in the fitting disclosed by Allen so that the flange will be provided at an end of the peripheral wall opposite to the end wall to allow securement of the fitting and therefore of the coupling to a supporting wall. Doing so, teaches that the use of a plate to secure the body of a fitting to a wall is well known in the tube securing art.

Allen also discloses that:

- The bottom opening is circular and has a central axis (Figs. 1-10 and 13).

The peripheral wall has a generally frustoconical shape and the socket axis being generally coincidental with the central axis of the bottom opening (Figs. 1-10 and 13).

- The fingers are more than three in number and are separated by generally V-shaped spaces that increase in width from the generally cylindrical entrance portion to

the finger terminal ends so that the fingers gradually decrease in circumferential width in a direction from the generally cylindrical entrance portion to the finger terminal ends (Figs. 1-10 and 13).

- The end wall is generally flat (Figs. 2 and 4-6).

Allen discloses that the finger are more than three in number and all the fingers have radially inwardly extending teeth thereon adjacent the finger terminal ends. Allen fails to disclose that only two generally opposed ones of the fingers have radially inwardly extending fingers thereon adjacent the finger terminal ends. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the only two generally opposed ones of the fingers have radially inwardly extending fingers thereon adjacent the finger terminal ends since a reduction on the amount of teeth will provide a reduction on the manufacturing costs since only two of the fingers need to have the teeth and less material is needed to make the fitting.

Regarding claim 12, claim 12 can be rejected by using a combination of the rejection of claims 1 and 7 that will provide the same limitations being recited by the claim.

Regarding claim 19, the rejection of claim 1 serves to reject claim 19 since the claim does not specify what surface is being used to define the longitudinal socket axis and the claim limitations can be met if the axis taken along the finger surface since the axis will have an angle less than 90 degrees to the plane in which the plane outer surface of the flange lies and intersect the bottom opening (Figs. 1-10 and 13).

For claim 23, Allen discloses that the bottom opening is circular. Allen fails to disclose that the bottom opening is non-circular. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a non-circular shaped bottom opening such as an oval since a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In this case, the fitting will work equally as well irregardless of whether the bottom opening has an oval shape as long as the fitting has an generally cylindrical socket.

Regarding claim 30, the same rejection of claim 1 serves to reject claim 30 since Allen discloses that the body (30) has a body wall (36) forming an internal cavity with a bottom opening (Figs. 1-10 and 13). The socket extends through the body wall into the cavity (Figs. 1-10 and 13). The body wall is continuous and free of openings therethrough around the socket including around the socket fingers and capable of precluding entry of poured concrete into the socket and the cavity through the body wall (Figs. 1-10 and 13). The cavity, the body wall and the socket are configured to provide insertion of an electrical nonmetallic tube into and through the socket past the finger terminal ends (Figs. 1-10 and 13).

The body wall includes a generally flat endwall through which the socket extends into the cavity (outer wall opposite to 16).

The socket has a continuous and uninterrupted entrance portion that is surrounded by the cavity with the body wall in outwardly-spaced surrounding relationship thereto (Figs. 1-10 and 13). The finger have finger inner surfaces that are

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inclined toward the socket axis in a direction away from the cylindrical entrance portion toward the finger terminal ends (Figs. 1-10 and 13). The finger inner surfaces are curved to lie on the surface of a cone (Figs. 2 and 4-6).

The body wall, the cavity and the socket are configured with the cavity surrounding the socket and with the body wall in outwardly-spaced surrounding relationship to the socket (Figs. 1-10 and 13).

The fingers disclosed by Allen are more than three in number and include one generally opposed pair of fingers having generally radially inwardly extending teeth adjacent the terminal ends thereof (Figs. 1-10 and 13). The teeth are configured to provide movement of an end portion of an electrical nonmetallic tube into and out (through forceful removal or with a tube of small diameter) of the socket while releasably holding the end portion of the electric nonmetallic tube within the socket by reception of the teeth in an external circumferential groove in the end portion of the electrical nonmetallic tube (Fig. 13).

Regarding claim 39, claim 39 can be rejected by using a combination of the rejection of claims 1 and 36 that will provide the same limitations being recited by the claim since the form is the wall that supports the fitting in accordance with the teaching of Schamp and the wall or form has a plane form surface with the fitting attached thereto.

Allowable Subject Matter

9. Claims 26-29 allowed.
10. Claims 8 and 31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 21 June 2007 have been fully considered but they are not persuasive.
12. The Applicant argues that Allen fails to disclose that "said fingers being configured to releasably hold an end portion of an electrical nonmetallic tube in said socket against unintentional displacement therefrom while permitting separation of the socket and the end portion of the electrical nonmetallic tube". This argument fails to persuade.
13. In response to applicant's argument that Allen fails to disclose "said fingers being configured to releasably hold an end portion of an electrical nonmetallic tube in said socket against unintentional displacement therefrom while permitting separation of the socket and the end portion of the electrical nonmetallic tube", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the claim limitation can be met when a tube of smaller diameter is used in combination with the fitting and there is play between the tube and the fitting that allows the separation of the tube from the fitting or when a considerable amount of force is applied to separate the fitting from the tube and this force causes the separation of the two members even though one of the members can be damaged. The same response apply to the arguments presented against claims 36-38.

14. The Applicant argues at the end of page 22 of his reply that Allen discloses that the fingers having sharp teeth prevent disassembly of the connector by biting into the tubing and proceeds to recite several instances where Allen makes this statement . However upon review of these recitations, Allen only discloses that the removal of the tube from the fitting is prevented but it never discloses that the removal of the tube from the fitting is impossible. The removal may require a considerable amount of force but it can still be performed. The same response apply to the arguments presented against claims 36-38.

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fitting could not be separated from the tubing end portion after curing of the concrete and removal of the forms) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed.

Cir. 1993). In this case, Allen is capable of performing the intended use recitation that is being included in the claims and as a result it meet the claim limitations. Additionally, the claims do not recite any limitation that requires separation of the tubing end after curing of the concrete and removal of the forms.

16. The Applicant argues that Allen fails to disclose a generally cylindrical entrance portion since the entrance portion of Allen is conical. This argument fails to persuade.

The term "generally" is considered a very broad term and as a result "generally cylindrical entrance portion" indicates that the surface need not to be strictly cylindrical in order to fall within the scope of the patent. *Arvin Industries Inc v. Berns Air King Corp.* (CD NIII) 180 USPQ 560.

17. The next argument presented by the Applicant is that the fitting of Allen will allow seepage of concrete through the spaces between the fingers. The Examiner fails to be persuaded by this argument. The claims only recite "said body peripheral wall and endwall being continuous and free of openings therethrough around said socket to preclude entry of poured concrete into said socket and said cavity through said body peripheral wall and endwall". The claims only require the body peripheral wall and the end wall to be free of openings in order to perform this and Allen discloses that both members are free from opening. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the generally cylindrical socket precludes entry of poured concrete into the socket and the body) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

18. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the small flange 39 of Allen is not meant to connect the fitting directly to a supporting surface, however, one of ordinary skill in the art will recognize that a flange using fastener to directly support the fitting to a supporting surface is well known in the fitting art and that Schamp teaches such a flange that serves as a support for the fitting. Especially since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of invention. KSR, 550 U.S. at 82 USPQ2d at 1391. With respect to the location of the flange, the fitting by Allen is projects outwardly from a surface and it is not meant to be a bushing that extends through the supporting surface. Therefore, one of ordinary skill in the art will recognize that the flange should be located away from the peripheral wall in order to allow its direct connection to the supporting surface.

19. The Applicant argues that Allen fails to disclose a generally frusto conical shape. This argument fails to persuade. The term "generally" is considered a very broad term and as a result "generally cylindrical entrance portion" indicates that the surface need not to be strictly frusto conical in order to fall within the scope of the patent. *Arvin Industries Inc v. Berns Air King Corp.* (CD NIII) 180 USPQ 560.

20. The next argument indicates Allen's failure to disclose V-shaped spaces between the fingers. The Examiner fails to be persuaded by this argument because Figures 7 and 8 clearly illustrate that the finger decrease in circumferential width and that a V-shaped space is provided between the ends of the fingers. Figure 7 shows that the spacing between the finger at the end adjacent to the generally cylindrical entrance portion is smaller than the spacing between the fingers at and opposite free end and Figure 8 shows how the circumferential width of the finger decreases towards its respective free end.

21. Applicant's arguments, see lines 1-11 in page 25 of Applicant's remarks, filed 21 June 2007, with respect to the rejection of claims 8, 11, 18 and 23 have been fully considered and are persuasive. The rejection of claims 8, 11, 18 and 23 has been withdrawn.

22. Applicant's arguments, see lines 6-11 in page 25 of Applicant's remarks, filed 21 June 2007, with respect to the rejection(s) of claim(s) 19, 23 and 24 under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Schamp as applied to claims 1, above, and further in view of Hasty have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a

new ground(s) of rejection is made in view of Allen in view of Schamp as included above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

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Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

/James R. Brittain/
Primary Examiner
Art Unit 3677

rcr
September 7, 2007